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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91198858
Party	Defendant NextPoint Inc.
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Date	05/06/2013
Attachments	Objection to Request for Judicial Notice (5-6-13) CaseCentral v. Nextpoint.pdf (3 pages)(160758 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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CASECENTRAL, INC.,)	Mark: PRESERVATION
)	CLOUD
)	
Opposer,)	Serial No.: 77/922,469
)	
v.)	Opposition No. 91198858
)	
NEXTPPOINT, INC.)	Published in the Official
)	Gazette on November 9, 2010
)	
Applicant.)	

Applicant Nextpoint, Inc.’s Objection to Opposer’s Request for Judicial Notice

Applicant Nextpoint, Inc. (“Applicant,” “Nextpoint”) respectfully objects to the Request for Judicial Notice filed by Opposer Cascentral, Inc. (“Cascentral,” “Opposer”) on April 4, 2013 and states as follows:

1. On April 4, 2013, Opposer requested that this Board take judicial notice of a document, attached as Exhibit A thereto, alleged to be an excerpt from a declaration filed on February 18, 2011 in a federal lawsuit between Opposer and Applicant.

2. Opposer cites this incomplete declaration to assert the truth of the matter asserted therein, namely that the declarant William J. Frimel sent a letter to Nextpoint’s counsel on January 27, 2011 accusing Nextpoint of failing to use the PRESERVATION CLOUD mark, (Opp.’s Brief, 4) apparently implying that this letter was the cause of Nextpoint’s decision to voluntarily dismiss its trademark claims against Opposer. Id.

3. Opposer’s request is untimely. Facts that a party requests to be judicially noticed should be presented during the requesting party's testimony period, by notice of reliance accompanied by the necessary information. TMBP § 704.12(b); Litton Business Systems, Inc. v. J. G. Furniture Co., 190 USPQ 431 (TTAB 1976). Opposer’s trial period ended on October 7, 2012, and its rebuttal period ended on January 20, 2013. Its request, made concurrent with its trial brief, should therefore be denied.

4. In addition, the document that Opposer seeks to introduce is an inappropriate subject for judicial notice. Judicial notice may be taken only of “a fact that is not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b); TBMP § 704.12. Opposer may not introduce new documentary evidence by way of a request for judicial notice.

5. To the extent that Opposer requests judicial notice of the fact that the document it has attached to its request as Exhibit A was sent to Nextpoint on January 27, 2011, this is not a fact that is either generally known or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

For all of the foregoing reasons, Applicant respectfully requests that Opposer’s Request for Judicial Notice be denied and Opposer’s citation to these materials be stricken from the record.

DATED: May 6, 2013

SAPER LAW OFFICES, LLC

By: /Daliah Saper/
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CERTIFICATE OF SERVICE

I, Daliah Saper, an attorney, hereby certify that on May 6, 2013 I served a copy of the foregoing Objection to Request for Judicial Notice via electronic mail and first class mail to:

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